



# State of New Jersey

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*Governor*

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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October 28, 2025

JOHN D. MEGARIOTIS  
*Acting Director*

Sent via email to: [REDACTED]

Victor B. Matthews, Esq.  
[REDACTED]  
[REDACTED]

RE: Emily Konopinski  
TPAF [REDACTED]  
OAL DKT. NO. TYP 03417-25  
OAL DKT. NO. TYP 08293-24 (On  
Remand)

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Dear Mr. Matthews:

At its meeting on September 4, 2025, the Board of Trustees of the Teachers' Pension and Annuity Fund ("TPAF") considered the July 30, 2025 Initial Decision on Remand ("Second Remand ID") of the Honorable William J. Courtney, Administrative Law Judge ("ALJ"), together with the evidence submitted by the parties, the exceptions filed by Deputy Attorney General ("DAG") Payal Y. Ved, dated August 12, 2025, your reply to DAG Ved's exceptions, dated August 18, 2025, your statements to the Board and those of DAG Ved.<sup>1</sup> Thereafter, the Board voted to reject the ALJ's decision that found that Emily Konopinski ("E.K.") met her burden to prove she was totally and permanently disabled from the performance of her job duties and thus is entitled to Ordinary Disability ("OD") retirement benefits, thereby reaffirming its original determination. For the reasons set forth below, the Board corrected the ALJ's procedural history and findings of fact, made additional findings of fact and rejected the ALJ's conclusion that E.K. is totally and permanently disabled. The Board directed the Secretary to prepare the Findings of Fact and

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<sup>1</sup> DAG Ved recused herself as counsel to the Board as she represented the Board during litigation. Legal counsel was provided by DAG Matthew Melton.

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Conclusions of Law as outlined below, which were approved by the TPAF Board at its meeting on October 27, 2025. This will constitute the Board's Final Administrative Determination in this matter.

### **PROCEDURAL HISTORY AND FACTUAL FINDINGS**

The Board corrects the ALJ's procedural history where he notes that at the August 2, 2024, remand hearing "the parties agreed that no additional testimony would be needed and that a decision on the remand issue could be made from the record compiled in the Original Matter." (Second Remand ID at 2). The Board notes that in remanding the matter, the DAG requested additional testimony from E.K. and sought to introduce additional exhibits. (3T15:9-16; 3T17:7-9; 3T20:10-21:11; 3T21:7-11; 3T22:11-16).<sup>2</sup> The Board notes that the ALJ denied the request and ruled that he was going to render a decision based on the current record without additional testimony (3T30:9-31:12).

The Board also corrects the ALJ's factual finding that E.K. opened her studio "sometime in 2003." (Second Remand ID at 11). E.K. testified that she opened her studio in the spring of 2022. (4T40:10-23).

On June 21, 2021, E.K. applied for an Accidental Disability ("AD") retirement benefit, based upon an incident that occurred on May 5, 2017, which allegedly caused her to [REDACTED]. (J-2). E.K. testified that while retrieving her lunch from a cabinet, [REDACTED]. (J-2). After being treated by the school nurse, she was referred for medical care to Essex Valley Healthcare ("EVH"). (Second Remand ID at 3). E.K. indicated complaints [REDACTED]. Ibid. She [REDACTED]. Ibid. There she was evaluated

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<sup>2</sup> "1T refers to the July 26, 2023, hearing transcript; "2T refers to the July 27, 2023, hearing transcript; "3T" refers to the August 2, 2024, remand hearing transcript; and "4T" refers to the May 8, 2025, remand hearing.

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██████████. Ibid. EVH also indicated that E.K. was to be out of work. Ibid. The C ██████████  
██████████ were negative ██████████. Ibid.

Three days later, she returned to EVH ██████████  
██████████. Ibid. Thereafter, ██████████, Dr. Bhawsar who  
diagnosed her with ██████████  
██████████. (Second Remand ID at 3-4). She  
remained out of work ██████████ until she returned in April 2018. (1T50:2-4;  
1T53:6-7; Remand ID at 3-4).

The Board makes the following additional findings of fact. First, E.K. testified she  
experienced major declines in the summer of 2017, months after the incident. (1T41:1-6;  
1T112:10-18). Second, on July 11, 2017, Nilaya Bhawsar, D.O. (“Dr. Bhawsar”) ██████████  
cleared E.K. to return to normal activities and work. (P-5). Third, on January  
10, 2018, Jennifer Cole, Ph.D. (“Dr. Cole”), ██████████  
noted that “from a ██████████ standpoint, [E.K.] is cleared to return to  
work” in January 2018. (P-7). Dr. Cole further noted, “although [E.K.] continues to  
experience some ██████████, if she is able to use the strategies  
she has learned and implemented, it will not affect her ability to teach art in her position.”  
Ibid. Fourth, Dr. Bhawsar again ██████████ cleared [E.K.] to work with no restrictions in  
April 2018. (1T49:23-25; P-5). Fifth, neither Dr. Bhawsar nor Dr. Cole, who are both trained  
to screen for ██████████, indicated any finding of ██████████. (2T28:22-29:6; P-7; 2T29:1-6; P-5).  
Sixth, after being released with no restrictions by her treating physicians, E.K. worked from  
April 2018 to June 2018, from September 2018 to June 2019 with two weeks out of work,  
and from September 2019 to June 2020 with a couple weeks out of work. (1T50:2-4;

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1T53:6-7; 1T54:5-7; 1T55:1-5; 1T84:2-14). Seventh, Kenneth Kutner, M.D.'s ("Dr. Kutner")<sup>3</sup>

complete and thorough [REDACTED] on November 17, 2021, did not reveal any objective findings sufficient to establish a total and permanent disability at the time E.K. left employment. (2T32:23-33:13; 2T34:25-36:11). Eighth, Dr. Kutner performed a

[REDACTED] examination, [REDACTED] [REDACTED]. (2T22:2-25:14). Ninth, Dr.

Kutner's testing found no objective evidence for a [REDACTED] diagnosis. (2T29:8-21). Based on his examination, E.K. did not experience recurring intrusive disturbing events, disturbing nightmares, flashbacks, or avoidance of the 2017 incident, all of which are symptoms of [REDACTED]. Ibid. Tenth, Dr. Tosk performed a [REDACTED] examination, but it was cursory examination that [REDACTED]

[REDACTED]. (P-1). Dr. Tosk did not perform any [REDACTED] [REDACTED] testing. Ibid. Eleventh, E.K. testified Steven Lomazow, M.D., [REDACTED] who she went to for a [REDACTED] [REDACTED] in September 2020, recommended permanent disability. (1T69:19-70:6). However, on September 3, 2020, Dr. Lomazow indicated that E.K. was "temporarily disabled." (P-15).

At its monthly meeting on January 6, 2022, the Board denied E.K.'s application for AD. (J-4). The Board found the May 5, 2017, incident ("2017 incident") was identifiable as to time and place, undesigned and unexpected, occurred during and as a result of the performance of E.K.'s regular or assigned duties and was not the result of her willful negligence. Ibid. However, the Board found E.K. was not totally and permanently disabled from the performance of her regular or assigned duties and that her disabling condition was not directly caused by the 2017 incident. (J-4). E.K. subsequently filed an appeal and the matter was transmitted to the Office of Administrative Law (OAL). (J-5).

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<sup>3</sup> Dr. Kutner testified on behalf of the Board.

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On April 10, 2024, the ALJ issued an Initial Decision (ID) finding that E.K. was not totally and permanently disabled as a result of the traumatic event arising during and because of the performance of her regular job duties and her application for AD was denied. After reviewing the exceptions<sup>4</sup> and reply to exceptions, at its meeting of June 6, 2024, the Board voted to remand the matter to the OAL. Specifically, the Board remanded the appeal to the OAL in order for the ALJ to make an administrative decision as to whether E.K. is totally and permanently disabled. As previously corrected, the DAG requested additional testimony from E.K. and sought to introduce additional exhibits. (3T15:9-16; 3T17:7-9; 3T20:10-21:11; 3T21:7-11; 3T22:11-16). However, the ALJ denied the request and relied on the record in the original matter.

On November 25, 2024, the ALJ issued an ID on the remanded matter and found that E.K. has established by a “preponderance of the credible medical evidence that she is permanently and totally disabled from the performance of her duties in the general area of her ordinary employment,” and was therefore entitled to receive OD.

At its meeting on February 14, 2025, the Board remanded the matter back to the OAL “for Judge Courtney to take additional testimony and any evidence related to E.K.’s business where she teaches art classes and then issue a new Initial Decision incorporating the new evidence.”

On July 30, 2025, the ALJ issued an ID finding that E.K. has met her burden to prove she was totally and permanently disabled from the performance of her job duties and thus is entitled to Ordinary Disability (“OD”) retirement benefits. (Second Remand ID at 20).

### **CONCLUSIONS OF LAW**

First, the Board takes exception to the ALJ’s finding that E.K. has established by a “preponderance of the credible medical evidence that she is permanently and totally disabled from the performance of her duties in the general area of her ordinary employment.”

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<sup>4</sup> The exceptions included the opening of E.K.’s art studio in 2022.

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(ID – July 2025 Remand at 16).

In Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J. 189 (2007), the Supreme Court set forth a five-prong test that must be satisfied by an applicant for AD.

A TPAF member seeking AD must prove:

1. that [s]he is permanently and totally disabled;
2. as a direct result of a traumatic event that is
  - a. identifiable as to time and place,
  - b. undesigned and unexpected, and
  - c. caused by a circumstance external to the member (not the result of pre-existing disease that is aggravated or accelerated by the work);
3. that the traumatic event occurred during and as a result of the member's regular or assigned duties;
4. that the disability was not the result of the member's willful negligence; and
5. that the member is mentally or physically incapacitated from performing his usual or any other duty.

[Id. at 212-13.]

The applicant bears the burden of proof on each of these prongs. Id. at 212. In this matter, E.K. must demonstrate by a preponderance of credible evidence that she has a disabling permanent injury, and she must provide expert evidence to sustain this burden. Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 51 (2008).

When there is competing and conflicting expert testimony, as in this case, the court should weigh each expert's testimony using such factors as whether the expert witness testified in his specialty and whether the expert's conclusions are based only on subjective, rather than objective, medical evidence. Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 86 (App. Div. 1961). Once the court accepts a witness as an expert, "the credibility of

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the expert and the weight to be accorded his testimony rest in the domain of the trier of fact.”

Id. at 85-86. The testimony of an expert who makes “findings based on objective tests performed on [the] petitioner” is more compelling than, and should be credited over, the testimony of an expert who “relied on the petitioner’s ‘subjective complaints to arrive at his opinion.’” O’Neill v. Bd. of Trs., Pub. Emps.’ Ret. Sys., 2016 N.J. Super. Unpub. LEXIS 44, at \*10 (App. Div. March 14, 2016) (per curiam).

Second, the Board takes exception to the ALJ’s conclusion that Dr. Tosk’s testimony was more credible than the testimony of Dr. Kutner on the issues of total and permanent disability. (ID – July 2025 Remand at 15).

In this matter, after considering all the relevant and admissible evidence in the record, the Board finds that E.K. failed to satisfy her burden of proving that she was totally and permanently disabled when she left employment. The Board also finds its expert, Dr. Kutner, testified more reliably than Dr. Tosk because his conclusions were more in accordance with E.K.’s medical history and the opinions of her treating physicians.

The record establishes that Dr. Kutner administered a complete and thorough [REDACTED] evaluation on November 17, 2021. His evaluation did not reveal any objective findings necessary to establish a total and permanent disability at the time E.K. left employment. (2T32:23-33:13; 2T34:25-36:11). Dr. Kutner performed a [REDACTED] [REDACTED] [REDACTED]. (2T22:2-25:14). In contrast, Dr. Tosk, did not perform any [REDACTED] and instead relied almost entirely on E.K.’s treating physician’s reports, many of which were many years older and did not provide an up-to-date status of her condition. (P-1). Markedly, the ALJ even noted that Dr. Tosk relied on E.K.’s subjective statements regarding her condition. (Second Remand ID at 15-16). Dr. Tosk performed a [REDACTED] examination, that evaluated [REDACTED]

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██████████ (P-1). Additionally, Dr. Tosk was unable to reliably opine on E.K.'s condition at the time of his examination because he did not perform any of his own ██████████ testing.

Moreover, the objective testing that Dr. Kutner performed did not find any evidence of ██████████. (2T27:5-8; 2T28:14-29:21; ID at 8). Dr. Kutner explained that ██████████ can be diagnosed three to four weeks after a ██████████ is only permanent if the symptoms persist after one year. (2T31:12-17; ID at 17). Dr. Bhawsar and Mary Kezmarsky, Ph.D. ("Dr. Kezmarsky"), a ██████████ both diagnosed E.K. with ██████████ three weeks and four weeks following the incident, respectively. (Second Remand ID at 3-4). According to Dr. Kutner, these diagnoses were made within the one-year recovery window and could not be used to conclude the permanency of E.K.'s ██████████. (2T47:23-17; ID at 17). The only way to establish the permanency of E.K.'s ██████████ was to conduct ██████████ testing after one year. However, no testing was performed between Dr. Kezmarsky's evaluation in September 2017 and Dr. Kutner's evaluation in November 2021. (2T48:25-49:4; ID at 17). The Board notes that all of Dr. Kutner's testing showed that E.K. did not have ██████████ and his effort testing revealed that she was greatly exaggerating her symptoms. (ID at 8).

In addition, the Board notes that both Dr. Bhawsar and Dr. Cole cleared E.K. to return to work in 2018. (1T49:23-25; P-5; P-7). In January 2018, E.K.'s ██████████, Dr. Cole noted that "from a ██████████, [E.K.] is cleared to return to work." (P-7). Dr. Cole further noted, "although she continues to experience some ██████████ ██████████ if she is able to use the strategies she has learned and implemented,



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it will not affect her ability to teach art in her position.” Ibid. A few months later (April 2018),

Dr. Bhawsar [REDACTED] cleared E.K. to return to work with no restrictions. (P-5).

The Board notes that E.K. worked from April 2018 to June 2018, from September 2018 to June 2019 with two weeks out of work, and from September 2019 to June 2020 with a couple weeks out of work. (1T50:2-4; 1T53:6-7; 1T54:5-7; 1T55:4; 1T84:2-14). The fact that E.K. was able to work almost two full school years after the 2017 incident, after being cleared [REDACTED], show that she is not totally and permanently disabled by [REDACTED]. The ALJ’s decision was thus unreasonable in failing to give due regard to this probative evidence. (See Second Remand ID at 15-16).

As mentioned previously, Dr. Kutner’s testing found no objective evidence for a [REDACTED] diagnosis. (2T29:8-21). Dr. Kutner did not find symptoms of [REDACTED], as E.K. did not experience recurring intrusive disturbing events, disturbing nightmares, flashbacks, or avoidance of the 2017 incident. Ibid. Moreover, he did not find the 2017 incident rose to the level of severity that is required for a [REDACTED]. (2T29:16-21; Second Remand ID at 8). E.K.’s treating physicians did not note [REDACTED] at all or explicitly found no [REDACTED] related to the 2017 incident. In September 2017, Dr. Kezmarsky, found that there was no [REDACTED] related to the 2017 incident. (2T28:16-22; P-6; ID at 8). Moreover, Dr. Bhawsar and Dr. Cole, who are qualified to screen for [REDACTED] did not indicate any finding of [REDACTED] (2T28:22-29:6; P-7; 2T29:1-6; P-5). Nevertheless, Dr. Tosk diagnosed E.K. with [REDACTED] with [REDACTED] based upon her [REDACTED] complaints of symptoms during his examination, although he did not perform any objective testing to determine if she had [REDACTED] or its level of severity.

Further, the Board notes the ALJ’s conclusion that Dr. Tosk’s testimony was more credible than Dr. Kutner’s is contrary to conclusions he made about Dr. Tosk’s credibility elsewhere. In the April 10, 2024, Initial Decision, the ALJ wrote:

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It was on September 13, 2017, two days after being told by the principal that she wanted E.K. removed from her position for too many acts of insubordination and that nobody liked her, that E.K. returned to Dr. Bashwar complaining of [REDACTED]. She told Dr. Bashwar [sic] that she was struggling to deal with work-related issues and complained of being [REDACTED] [REDACTED] [REDACTED]. It does not appear from the record, however, that she told Dr. Bashwar [sic] what the principal had told her less than a week prior to her visit.

Her expert [REDACTED] Dr. Jarrett Tosk, also makes no mention in his report of this significant and [REDACTED] work-related issue occurring at the beginning of the 2017 school year. **His failure to address this issue and its impact on E.K.'s claims of [REDACTED] [REDACTED] from preparing lesson plans and [REDACTED] from bells ringing in the school (P-2, p.4-5), has resulted in my attributing less weight to his expert opinion.**

[ID at 16 (emphasis added).]

The Board also notes that while the Department of Veterans Affairs ("VA") determined that E.K. had a [REDACTED]" (P-13; ID at 12), this has no bearing on her application for AD, as the standard for a total and permanent disability is different. E.K. must establish that she is totally and permanently disabled from the performance of her regular and assigned job duties. Richardson, 192 N.J. at 212-13. Although she is disabled from military service, it does not mean that she is totally and permanently disabled from her duties as a teacher. This is readily apparent as E.K. left military service in October 2000 and was able to work as an art teacher until she filed for AD on June 21, 2021. (P-13; J-2).<sup>5</sup> Moreover, even if E.K. had [REDACTED], neither Dr. Tosk's testimony nor her treatment records support E.K. was unable to perform her job duties as an art teacher.

It was thus error for the ALJ to give weight to the VA disability determination in rendering his opinion. (See Second Remand ID at 15 ("Dr. Tosh's credible testimony on

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<sup>5</sup> The VA awarded E.K. her service-connected disability in approximately 2021 or 2022. (P-13; 1T64:12-21; ID at 12). Her service ended in approximately October 2000. (P-13; ID at 13).

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this issue also corresponds to the findings of the Veterans' Administration that E.K. is 100% disabled."). The VA disability determination, like a disability determination by the Social Security Administration, should have no bearing on this New Jersey pension case, which applies a completely different legal standard under a completely different process. See Villanueva v. Zimmer, 431 N.J. Super. 301, 318 (App. Div. 2013) ("The lack of a meaningful adversarial process with respect to the cause, existence and extent of a plaintiff's alleged disability renders the [Social Security Administration's] conclusions on that issue unreliable."); Russo v. Bd. of Trs., Teachers' Pension and Annuity Fund, 62 N.J. 142 (1973) (affirming that the worker's compensation standard for compensability is not applicable to a claim of accidental death under the pension statutes). Although the ALJ discusses some of the VA records, ID at 12, nowhere did the ALJ identify the VA disability standard and compare it to the pension disability standard. The Board thus found that the ALJ's opinion, which was partly premised on the VA disability determination, was unreasonable and unreliable.

For these reasons, the Board finds that Dr. Kutner's opinion deserves greater weight than Dr. Tosk's because he relied on [REDACTED] medical evidence tied to specific clinical findings and provide a detailed explanation why E.K. is not totally and permanently disabled. On the other hand, Dr. Tosk's based his opinion on E.K.'s [REDACTED] complaints and his review of outdated treatment records and did not perform any of his own [REDACTED] testing. In addition, he did not (and could not) provide an explanation for how his clinical findings led to his conclusion that E.K. was totally and permanently disabled.

The Board further notes that there are instances in the record where E.K. was inconsistent with her claims and descriptions [REDACTED]. For example, E.K. testified that she experienced major declines in the summer of 2017. (1T41:1-6; 1T112:10-18). Yet, Dr. Bhawar's treatment records state the opposite. He notes in his July 10, 2017, report, E.K.

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has "significant improvement since last visit. [REDACTED] is rare and mild. [REDACTED] is resolved. No longer having [REDACTED]. No [REDACTED]." (P-5; ID at 15). The following day he [REDACTED] cleared E.K. to return to normal activities and work. Ibid. Remarkably, the ALJ noted in the first ID, that during the same time, E.K. told Dr. Kezmarsky that her symptoms were improving. (ID at 15). Additionally, E.K. testified that Dr. Lomazow, who she went to for a [REDACTED] evaluation in September 2020, recommended permanent disability. (2T69:19-70:6). However, a report from Dr. Lomazow dated September 3, 2020, only indicates that E.K. was "temporarily disabled" and that she required further treatment. (P-15). The ALJ also found that E.K. intentionally failed to disclose her prior [REDACTED] to Dr. Kutner. (ID at 16). The ALJ noted that at the time of Dr. Kutner's evaluation, E.K. had already been diagnosed with - [REDACTED]. Ibid. The ALJ also noted E.K. intentionally withheld her prior history from Dr. Tosk. (ID at 16-17). In fact, the ALJ concluded "I find E.K.'s testimony, and especially her testimony associating her complaints with the May 5, 2017, injury, to be less than credible." (ID at 17). Accordingly, the Board rejects the ALJ's conclusion on total and permanent disability and finds that E.K. failed to satisfy her burden that she is totally and permanently disabled.

Finally, the Board takes exception to the ALJ's factual finding that E.K. had [REDACTED] on November 2024 and his legal conclusion that since suffering [REDACTED], she receives extensive treatment four days per week and her [REDACTED]. (Second Remand ID at 10, 19). The ALJ referred to this November 2024 [REDACTED] as "another major factor." Id. at 19.

The Board notes that E.K. has not provided any documentation or medical testimony regarding the November 2024 [REDACTED]. Moreover, because [REDACTED] happened after her application for AD, she has the burden of producing expert testimony establishing that the stroke was related to the disability she applied for and that [REDACTED] exacerbated her

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allegedly disabling condition. See N.J.S.A. 43: 15A-43 (requiring that the member establish that they are totally and permanently disabled "as a direct result of a traumatic event occurring during and as a result of the performance of [her] regular or assigned duties."); Patterson, 194 N.J. at 51 (member "must produce such expert evidence as is required" to sustain burden of proving disabling [REDACTED]). Furthermore, even if E.K. is applying for OD, she still must provide medical evidence and testimony to connect [REDACTED] to the disability she applied for and she has not done so. The ALJ, in rendering his opinion, unreasonably gave weight to this medical evidence without the assistance of expert testimony. (Second Remand ID at 19). As a result, the Board rejects the ALJ's findings of fact and legal conclusion regarding the November 2024 [REDACTED].

For the foregoing reasons, the Board rejected the ALJ's conclusion that E.K. has met her burden to prove she was totally and permanently disabled from the performance of her job duties and thus has determined she is ineligible for OD retirement benefits.

You have the right to appeal this administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter, in accordance with the Rules Governing the Courts of the State of New Jersey. All appeals should be directed to:

Superior Court of New Jersey  
Appellate Division  
Attn: Court Clerk  
PO Box 006  
Trenton, NJ 08625

Sincerely,



Saretta Dudley, Secretary  
Board of Trustees  
Teachers' Pension and Annuity Fund

G-1/SD

c. D. Lewis (ET); A. Saco (ET); C. Law (ET)

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Retired Health Benefits Section (ET)

DAG Payal Ved (ET)

OAL, Attn: Library (ET)

E.K. (via mail)